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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,133	02/07/2002	Richard C. Albert	FL0158 US NA	1388

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EXAMINER

DICUS, TAMRA

ART UNIT PAPER NUMBER

1774

DATE MAILED: 03/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/072,133

Applicant(s)

ALBERT, RICHARD C.

Examiner

Tamra L. Dicus

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

The Examiner acknowledges cancellation of claims 21-29. The previous rejections are withdrawn.

Claim Objections

1. Claim 16 is objected to because of the following informalities: “comprised fluoropolymer flakes” should be “comprised of fluoropolymer flakes”. Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 11, 13, 15 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by USPN 5,536,530 to Landers et al.

4. Landers teaches a textured laminate comprising a substrate, wear layer 18 (fluoropolymer film adhered to substrate), and particles or polymer chips 14 (discontinuous top layer of fluoropolymer flakes) all of polyvinyl fluoride (instant claims 14-15) for floor or wall coverings. See col. 3, lines 24-41 and col. 4, lines 27-35. See also Figure 1. While Landers does not teach a slip-resistant property (claim 3), it is an inherent property due to the fact that the same materials are employed and the texturing provided by those materials are in the same shape, resulting in slip-resistance. The claiming of a new use, new function or unknown property which

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is inherently present in the prior art does not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2, 5, 12, 14, 16, 17, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,536,530 to Landers et al. in view of USPN 6,336,988 to Enlow et al. Landers is relied upon above. Landers does not teach different colors in a film or flake as instant claims 2, 5, and 16 recite. Enlow teaches the method of applying polyvinylidene fluoride (fluoropolymer type resin) to a clear coat (transparent) in a first layer and a color coat in a second layer that contains pellets and pigments such as titanium dioxide (one color) and mixed metal pigments (a second color) in an extruder. See col. 14, lines 1-3 and 20-45. Further at col. 30, lines 23-40, Enlow teaches the use of PVF or PVDF to produce wood grain print coats. Such coloring is equivalent to a speckled and textured pattern as the same materials are provided by the prior art (instant claims 2, 16, 17, and 20). It would have been obvious to one of ordinary skill in the art to modify the fluoropolymer laminate of Landers with color via pigments as instant claims recite because Enlow teaches a method of applying pigment to fluoropolymer material in layers and flakes for the purpose of providing decorative surfacing. Although the reference does not exclusively state the polymer is not a mix of fluoropolymer and

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chloropolymers (per instant claim 14), it would have been obvious to one of ordinary skill in the art to use fluoropolymer alone because they are known equivalents. Fluoropolymers are known for the excellent weatherability and is shown by Enlow as a polymer known for making protective films. Landers does not state the thickness of sheet from 0.5 mils to 12 mils of instant claims 12 and 19. However, it would have been obvious to one of ordinary skill in the art to produce a thickness from 0.5 mils to 12 mils, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272. Thickness effects the strength.

7. Claims 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 5,536,530 to Landers et al. in view of USPN 6,336,988 to Enlow et al. and further in view of USPN 5,657,603 to Goodhart et al.

8. Landers is relied upon above. Landers does not teach the metals and coated substrates per instant claims 6-10. Goodhart teaches preparing sheet metal and fabricating roofing shingles. Goodhart provides motivation for utilizing metal or alloy coated substrates with fluoropolymer coatings at col. 10, lines 45-55 Goodhart teaches pigmentation and/or surface protection is of PVF or PVDF. The metal sheets include steel, aluminum, and a coating of zinc-aluminum alloy (see col. 9, lines 53-65 and col. 10, lines 10-15). It would have been obvious to one of ordinary skill in the art to employ metal or metal coated substrates of claims 6-10 to the sheeting of Landers because Goodhart teaches using metal and metal coated substrates are conventional to use for fluoropolymer coatings, using metal coated substrates to aid in corrosion protection and longer life at col. 10, lines 60-68 and using metal substrates for economy, impact resistance and long service at col. 9, lines 34-45.

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9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. USPN 4804572 to Bodrogi to wall covering with fluorocarbon stain resistant top coating. USPN 4717620 to Bowen et al. decorative coating s providing multicolor textured surface. USPN 3940523 to Lecoer et al. teaches decorative multilayer object. USPN 4126727 to Kaminski teaches resinous polymer sheet materials having selective, decorative effects. *USPN 5290591 to Lussi et al. teaches decorative inlaid sheets.*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamra L. Dicus whose telephone number is 571-272-1519. The examiner can normally be reached on Monday-Friday, 7:00-4:30 p.m., alternate Fridays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia Kelly can be reached on 571-272-1526. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 12, 2004

[tld]

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